

DEC 12 1990

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA

In Re:)	Case No. C-B-90-31306
)	Chapter 13
LINDA FOSTER,)	
)	
Debtor.)	JUDGEMENT ENTERED ON DEC 12 1990

ORDER GRANTING RELIEF FROM STAY,
DENYING CONFIRMATION, AND DISMISSING CASE

This Chapter 13 case is before the court on two creditors' objections to confirmation, motions for dismissal, and motions for relief from stay. The court has concluded that the relief sought by these creditors should be granted.

BACKGROUND

This Chapter 13 case was filed September 11, 1990. It is the debtor's sixth bankruptcy case and her fourth bankruptcy filing in the past two years. These cases include (in chronological order:)

- (1) Case No. C-B-76-7678, a Chapter 13 case filed in 1976;
- (2) Case No. C-B-81-00034, a Chapter 7 case filed in 1981;
- (3) Case No. C-B-89-30352, a Chapter 7 case filed March 28, 1989, and dismissed on August 4, 1989 for non-payment of the filing fee;
- (4) Case No. C-B-89-31069, a Chapter 7 case filed September 5, 1989, in which the debtor received a Chapter 7 discharge on December 19, 1989. (The debtor did not claim any exemptions; the case was administered as a no asset case);
- (5) Case No. C-B-90-30381, a Chapter 13 case filed March 20, 1990, and dismissed on April 11, 1990, because the debtor failed to make her required first payment to the Trustee; and

(6) Case No. C-B-90-31306, this pending Chapter 13 case filed September 11, 1990.

The debtor's present plan has a number of serious defects: It proposes an eighty-month plan -- well in excess of the sixty-month limitation. 11 U.S.C. § 1322(c). The debtor's schedules indicate income of \$2,500 per month, but her plan proposes to pay only \$50 per month to creditors. According to the debtor's testimony at the hearing, however, her monthly income actually is only about \$600, which appears to be less than her actual living expenses. Nevertheless, the debtor now states an intention to pay \$120 per month to creditors. Although the debtor professes a desire and intention to pay her creditors, she actually has paid nothing to creditors in any of the four bankruptcies that she has filed in the last two years. Additionally, until shortly before the present hearing, the debtor was in default on the installment payments of her filing fee for this case. And, moreover, in the three months that this Chapter 13 case has been pending, the debtor has made no payment to the Trustee.

Creditor Affiliated Services, Inc. ("ASI") is owed over \$2,700 for moving and storage of furniture. The furniture, which has a fair market value of \$1,400, has been in storage -- and subject to ASI's lien -- since March 1988. The debtor has made no payment on this debt. In March 1989, ASI had scheduled an auction of the furniture to satisfy its lien, but the day before the scheduled sale, the debtor intervened with the filing of her third bankruptcy petition (Case No. C-B-89-30352). After dis-

missal of that case, ASI scheduled another auction of the furniture, which was stayed by the filing of the debtor's fourth bankruptcy. (Case No. C-B-89-31069). That Chapter 7 case was administered as a no-asset case, and the debtor received her discharge. She made no claim of exemption in the furniture held by ASI.

Creditor Household Retail Services, Inc., ("HRS") obtained a Judgment against the debtor and, during a gap period between her bankruptcies, HRS executed on the Judgment by taking possession of her car on which there were no other liens (this car had not been listed as an asset in any of the debtor's prior bankruptcies). In the course of attempting to negotiate the return of the car, the debtor misrepresented her identity and was discovered to have been using two different social security numbers. When she was unable to obtain return of the car through misrepresentation and negotiation, the debtor filed the present bankruptcy case and filed a related adversary proceeding to attempt to recover possession of the car. When she advised HRS' agent that she had filed a Chapter 13 bankruptcy petition, he said, "Chapter 13, well at least you will be paying something." The debtor responded, "Not necessarily."

DISCUSSION

Objection to Confirmation/Motion to Dismiss

The debtor's proposed Chapter 13 plan cannot be confirmed for a number of reasons. It fails to satisfy both 11 U.S.C.

§§ 1325(a)(3) and (a)(5). Moreover, it proposes an eighty-month payment plan, which significantly exceeds the period permitted by the Code. 11 U.S.C. § 1322(c). Furthermore, the debtor's proposed plan clearly fails on its face to apply her purported disposable income to payment of her debts. In fact, the debtor's schedules are wholly unreliable, and her reorganization is futile. The debtor has a history of inability to pay filing fees or fund a plan; and the evidence here demonstrates that the debtor cannot fund a feasible Chapter 13 plan.

Additionally, this case represents an abusive serial bankruptcy filing intended to frustrate creditors' efforts to enforce their rights, rather than to reorganize of the debtor by (at least partial) payment of her debts. The facts belie the debtor's professed desire and intention to pay her creditors: In less than two years, she has filed four bankruptcy petitions -- two timed to stay auctions of her furniture and one timed to obtain possession of her car (after deception failed her) -- and she has not yet made any payment to creditors (and, in fact, has defaulted on payment of filing fees twice). This fourth recent filing (sixth overall) is an abuse of the bankruptcy process and cannot be tolerated.

For these reasons, the court has concluded that this case cannot be confirmed but must be dismissed and that further injunctive relief is required to prohibit the debtor from further abusing the bankruptcy process.

Relief from the Stay

ASI's motion for relief from stay to enforce its lien rights in the debtor's furniture should be granted. ASI has demonstrated adequate "cause" for relief from the stay by the facts that the debtor has made no payments to it in almost three years, that the amount of its debt continues to rise in excess of its security with no prospect for further security or any payments by the debtor, in addition to the debtor's multiple filings timed to frustrate ASI's efforts to realize the value of its security. 11 U.S.C. § 362(d)(1). Further, it is apparent that the debtor does not need this property (since she has lived since March 1988 without it), and the debtor has no equity in the property. 11 U.S.C. § 362(d)(2).

The court has concluded sua sponte to grant HRS relief from the stay. The debtor's inability to pay or secure HRS' debt or in any way adequately to protect HRS' interest in the car constitutes sufficient "cause" to justify relief from the stay. The other facts and circumstances set out above further justify that relief.

Because of the debtor's serial filings designed to frustrate creditors, the court has concluded that the relief from stay granted ASI and HRS also should apply in any future case filed by the debtor as to property involved in this case.

It is therefore ORDERED that:

1. ASI's motion for relief from stay is granted and ASI and its agents are relieved from the provisions of the automatic

stay with respect to debtor's property in which it presently holds a lien, said relief to apply in this case and in any subsequent bankruptcy case filed or attempted to be filed by the debtor in this or any other district;

2. HRS and its agents are granted relief from the provisions of the automatic stay with respect to debtor's property which it presently holds, said relief to apply in this case and in any subsequent bankruptcy case filed or attempted to be filed by the debtor in this or any other district;


3. The Objections to confirmation are sustained, and the court declines to confirm the debtors' proposed plan;

4. This Chapter 13 case is dismissed;

5. The debtor is enjoined further not to file or attempt to file any subsequent bankruptcy petition in this district or in any other district in the United States without first: (1) obtaining an Order of this court permitting filing of the petition; (2) paying the full amount of the filing fee; and (3) complying with such other prerequisites that the court may impose; and

6. The Clerk's Office of the U.S. Bankruptcy Court for the Western District of North Carolina is directed not to accept any subsequent bankruptcy petition filed by the debtor or on her behalf without this court authorizing the filing by formal Order.

This the 12th day of December, 1990.



George R. Hodges
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA

DEC 12 1990

In Re:

LINDA FOSTER,

Debtor.

Case No. C-B-90-31306-74
Chapter 13

JUDGEMENT ENTERED ON DEC 12 1990

JUDGMENT

This action was decided by the undersigned and an Order was filed on December 12, 1990. Consistent with that Order,

It is ORDERED and ADJUDGED that:

1. Affiliated Services, Inc.'s (ASI) motion for relief from stay is granted and ASI and its agents are relieved from the provisions of the automatic stay with respect to debtor's property in which it presently holds a lien, said relief to apply in this case and in any subsequent bankruptcy case filed or attempted to be filed by the debtor in this or any other district;

2. Household Retail Services, Inc. and its agents are granted relief from the provisions of the automatic stay with respect to debtor's property which it presently holds, said relief to apply in this case and in any subsequent bankruptcy case filed or attempted to be filed by the debtor in this or any other district;

3. The Objections to confirmation are sustained, and the court declines to confirm the debtors' proposed plan;

4. This Chapter 13 case is dismissed;

5. The debtor is enjoined further not to file or attempt to file any subsequent bankruptcy petition in this district or in

any other district in the United States without first: (1) obtaining an Order of this court permitting filing of the petition; (2) paying the full amount of the filing fee; and (3) complying with such other prerequisites that the court may impose; and

6. The Clerk's Office of the U.S. Bankruptcy Court for the Western District of North Carolina is directed not to accept any subsequent bankruptcy petition filed by the debtor or on her behalf without this court authorizing the filing by formal Order.

This the 12th day of December, 1990.



George R. Hodges
United States Bankruptcy Judge